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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/672,842	09/26/2003	Kelvin Craig Brodersen	64368-3	1324
22504	7590	10/19/2004	EXAMINER	
DAVIS WRIGHT TREMAINE, LLP			SELF, SHELLEY M	
2600 CENTURY SQUARE			ART UNIT	PAPER NUMBER
1501 FOURTH AVENUE			3725	
SEATTLE, WA 98101-1688				

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/672,842	BRODERSEN, KELVIN CRAIG	
	<b>Examiner</b>	<b>Art Unit</b>	
	Shelley Self	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 13-15, 17-19, 21-25, 30-35, 39-44, 48, 49, 51 and 52 is/are pending in the application.
- 4a) Of the above claim(s) 9-12, 16, 20, 26-29, 36-38, 45-47, 50, 53 and 54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-3, 5, 6, 13-15, 17-19, 21-24, 30-33, 39-44, 48, 49, 51 and 52 is/are rejected.
- 7) ☒ Claim(s) 4, 7, 8, 22, 23, 25 and 34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of the invention of Species I (figures, 1-10), readable on claims 1-9, 13-25, 30-35, 39-44 and 48-52 in the reply filed on September 21, 2004 is acknowledged. Figure 18 was inadvertently included in the Group I (Species I) of the restriction requirement, however upon further review it is clear that figure 18 should have been included with that of figure 19 as Group 8 (Species, figures 18, 19).

Per Attorney of Record, George Rondeau (telephone conference October 8, 2004) claims 9-12, 16, 20, 26-29, 36-38, 45-47, 50, 53 and 54 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on September 21, 2004.

The restriction is made Final.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 13-25, 30-35, 39-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 13, 30 and 39 are confusing. For example, regarding claims 13 and 30, the claim states, "*the spur attached to the first ...portion of the spur arm...*"

and *"a spur head member...attached to the first end portion of the spur arm..."* it is unclear if the spur includes the spur head member or if these are separate components both attached to the first end of the spur arm and if so must be attached to one another. Clarification is required.

Similarly, regarding claim 39, it is unclear if the anchor member and the head member are separate components and each attached to the first end portion of the anchor arm and therefore attached to each; or if the anchor member includes the head member. Clarification is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 48, 49, 51 and 52 and claims 13-15, 17, 24, 30, 31, 35, 39-41, 44 as best as can be understood are rejected under 35 U.S.C. 102(b) as being anticipated by Tomcheck (1,231,461). With regard to claim 1, 13, 15, 30, 31, 39, 41 and 48-51, Tomcheck discloses a bending jack for placement on a support surface comprising: a handle (11) have a first end and second end; a spur bar/anchor arm (12) having a first and second end, the second end being pivotally attached (10) to the send end of the handle, a spur/anchor member (13) fixed attached to the first portion of the spur, a spur head member/head member (12'), a push arm having a first and second portion (15), a push head (6) fixed attached to the first portion of the push arm and being position forward of the spur for engaging and pushing on the wooden plank

With regard to claim 3, 52 and claims 17, 24, 35, 44 as best as can be understood, Tomcheck inherently discloses a stop, to inhibit the forward and backward motion of a handle (11). In Wallum the handle (11) pivoted about (10) will stop forward/backward motion upon contact with the top/head (12') of the spur bar (12).

With regard to claims 14 and 40 as best as can be understood, the spur head (12') portion is adapted for striking with a hammer (fig. 2)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tomcheck (1,231,461) alone or in view of Wallum (797,245). Tomcheck does not disclose the push head to be on one-piece construction. It would have been obvious to one having ordinary skill in the art at the time of the invention to construct the push arm and head of one piece construction, because forming in one piece an article which has formerly been formed in tow piece and put together involves only routine skill in the art. Such construction creates no unobvious or unexpected result. See *Howard v. Detroit Stove Works*, 150 U.S. 164.

Moreover, Wallum teaches in a similar art a bending jack having a handle, spur/anchor bar, spur/anchor having a push arm and head (fig. 1) of one-piece construction (7, 5). Wallum teaches this construction for ease and durability. Because the reference are from a closely related

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art, it would have been obvious at the time of the invention to one having ordinary skill in the art to replace, Tomcheck's multi-piece construction push arm and head with a single/one-piece construction for durability as taught by Wallum.

Claims 5 and 6 and claims 18, 19, 21, 32, 33, 42, 43 as best as can be understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomcheck (1,231,461) in view of Fredericks (375,147). With regard to claims 5, 6, 18, 19, 21, 32, 33, 42 and 43, Tomcheck does not disclose the push arm including spaced apart first and second push arms. Fredericks teaches in a similar art the use of a spur, spur head, handle and push arm wherein the push arm includes elongated first and second arm members defining a space there between (fig. 2). Fredericks teaches this construction so as to ensure force equality on the pushing head exhibited from the push arms. Because the reference are from a similar art, it would have been obvious at the time of the invention to one having ordinary skill in the art to replace Tomcheck's single push arm with a pair of push arms as so as to enhance equal force on the push head from the push arm as taught by Fredericks.

***Allowable Subject Matter***

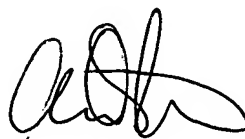
Claims 4, 7, 8, 22, 23, 25 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims if any 35 U.S.C. 112 rejections were overcome.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (703) 305-5299. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Allen Ostrager can be reached at (703) 308-3136. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIE or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SSelf  
October 8, 2004



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